

THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a Washington
corporation,

Plaintiff,

v.

MOTOROLA, INC., and MOTOROLA
MOBILITY, INC., and GENERAL
INSTRUMENT CORPORATION

Defendants.

CASE NO. C10-1823-JLR

DECLARATION OF STUART W.
YOTHERS IN SUPPORT OF
MOTOROLA'S MOTION FOR LEAVE
TO AMEND ITS INVALIDITY
CONTENTIONS

**NOTED ON MOTION CALENDAR:
Friday, November 18, 2011**

MOTOROLA MOBILITY, INC., and
GENERAL INSTRUMENT CORPORATION,

Plaintiffs/Counterclaim Defendant,

v.

MICROSOFT CORPORATION,

Defendant/Counterclaim Plaintiff

DECLARATION OF STUART W. YOTHERS
CASE NO. C10-1823-JLR

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1 1. I am an associate at the law firm of Ropes & Gray LLP, counsel to Motorola, Inc.
2 (now Motorola Solutions, Inc.), Motorola Mobility, Inc. and General Instrument Corporation
3 (collectively “Motorola”), Defendants in this action, and am a member in good standing of the
4 bars of the State of New York and the Commonwealth of Massachusetts.

5 2. I submit this declaration in support of Motorola’s Motion for Leave to Amend Its
6 Invalidity Contentions, submitted concurrently herewith.

7 3. On January 26, 2011, the day after Microsoft brought suit for infringement of U.S.
8 Patent No. 6,339,780 (“the ’780 patent”) and U.S. Patent No. 7,411,582 (“the ’582 patent”),
9 Motorola engaged two separate prior art firms to conduct searches related to the subject matter of
10 the ’780 and ’582 patents.

11 4. On February 7, 2011, Motorola began to receive and review results from its prior
12 art searches. These searches provided results on a rolling basis through February 22. From
13 February 7 through at least late April, Motorola’s attorneys actively analyzed the results of these
14 prior art searches and developed Motorola’s preliminary invalidity contentions.

15 5. On March 30, 2011, Motorola served its Responses to Microsoft Corporation’s
16 First Set of Interrogatories. Motorola’s response to Microsoft’s Interrogatory No. 11 identified
17 references that Motorola may rely on to show that the asserted claims of the ’780 patent and the
18 ’582 patent are invalid. Attached as Exhibit 1 is a true and correct copy of Plaintiff Motorola
19 Mobility, Inc. and General Instrument Corporation’s Response to Defendant Microsoft
20 Corporation’s Interrogatory No. 11.

21 6. Attached as Exhibit 2 is a true and correct copy of Defendant and Cross-Plaintiff
22 Microsoft Corporation’s September 2, 2011 Asserted Claims and Preliminary Infringement
23 Contentions (without exhibits).

24 7. On September 11, 2011, Motorola commissioned one of its previous prior art
25 searchers to renew its search and focus on the additional features of the newly asserted claims.
26

1 Additionally, on September 14, 2011, Motorola commissioned a new search for prior art related to
 2 the asserted claims of the '780 patent and the '582 patent.

3 8. On September 30, 2011, Motorola served its Preliminary Invalidity Contentions by
 4 way of a Supplemental Response to Microsoft Corporation's Interrogatory No. 11. Motorola's
 5 response to Microsoft's Interrogatory No. 11 identified additional references that Motorola may
 6 rely on to show that the asserted claims of the '780 patent and the '582 patent are invalid.
 7 Attached as Exhibit 3 is a true and correct copy of Plaintiffs Motorola Mobility, Inc. and General
 8 Instrument Corporation's Supplemental Response to Defendant Microsoft Corporation's
 9 Interrogatory No. 11.

10 9. On October 1, 2011, a consultant to Motorola identified a television program that,
 11 on information and belief, was aired on KCSM TV in San Mateo, CA on August 1, 1990. The
 12 program, titled "The Computer Chronicles", included a "HyperCard Update" that demonstrates the
 13 use of a HyperCard-based program called Culture 1.0. Motorola produced this video and several
 14 screen shots to Microsoft on October 3, 2011.

15 10. Attached as Exhibit 4 is a true and correct copy of Barnes & Noble's October 7,
 16 2011 Notice of Prior Art filed in *In the Matter of Certain Handheld Electronic Computing*
 17 *Devices, Related Software, and Components Thereof*, Investigation No. 337-TA-769, pending
 18 before the United States International Trade Commission ("USITC"). On October 19, 2011,
 19 Motorola's attorneys retrieved Barnes & Noble's Notice of Prior Art from the USITC's Electronic
 20 Document Information System ("EDIS"). On October 19, 2011, Motorola also began collecting
 21 the references identified on the Notice of Prior Art. Motorola produced to Microsoft on
 22 November 2, 2011 a majority of the 89 references identified in Barnes & Noble's Notice of Prior
 23 Art that had not been previously identified and produced by Motorola. Motorola is working to
 24 obtain the few remaining references and will produce the remaining references as soon as they are
 25 located.

11. On October 24, 2011, a consultant to Motorola identified to Motorola's counsel U.S. Patent No. 5,946,499 and other references related to the '582 patent.

12. Attached as Exhibit 5 is a true and correct copy of Plaintiffs Motorola Mobility, Inc. and General Instrument Corporation's Second Supplemental Response to Defendant Microsoft Corporation's Interrogatory No. 11, which was served on November 8, 2011.

13. Attached as Exhibit 6 is a true and correct copy of <http://www.engadget.com/2011/08/28/droid-bionic-pops-up-on-motorola-site-looks-set-for-september-8/>.

14. Attached as Exhibit 7 is a true and correct copy of <http://www.electronista.com/articles/11/08/28/droid.bionic.confirmed.shipping.september.8/>.

15. Attached as Exhibit 8 is a true and correct copy of an October 7, 2011 e-mail from Chris Wion (counsel to Microsoft) to Philip McCune (counsel to Motorola).

16. Attached as Exhibit 9 is a true and correct copy of an October 26, 2011 e-mail from Philip McCune (counsel to Motorola) to Chris Wion (counsel to Microsoft).

17. Attached as Exhibit 10 is a true and correct copy of an October 17, 2011 e-mail from Philip McCune (counsel to Motorola) to Chris Wion (counsel to Microsoft).

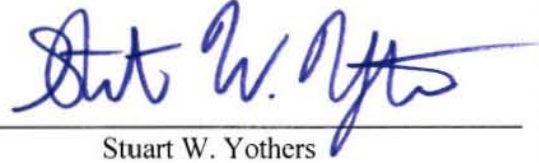
18. Attached as Exhibit 11 is a true and correct copy of an October 26, 2011 e-mail from Chris Wion (counsel to Microsoft) to Philip McCune (counsel to Motorola).

19. Attached as Exhibit 12 is a true and correct copy of Order Granting Motion To Amend Preliminary Invalidity Contentions in *Play Visions, Inc. v. Dollar Tree Stores, Inc.*, No. 09-1769, 2 (W.D. Wash. Nov. 30, 2010).

20. Attached as Exhibit 13 is a true and correct copy of Order No. 4: Setting the Procedural Schedule in *In the Matter of Certain Handheld Electronic Computing Devices, Related Software, and Components Thereof*, Investigation No. 337-TA-769, pending before the United States International Trade Commission.

1 I declare under penalty of perjury of the laws of the United States and the State of
2 Washington that the foregoing is true and correct.

3 DATED this 10th day of November, 2011.

4 
5 Stuart W. Yothers

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 10th day of November, 2011.

/s/ Marcia A. Ripley
Marcia A. Ripley